

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

THREE PARKS LLC,)	
)	
Appellant,)	CASE NO. 05C - 102 & 05C -105
)	
vs.)	FINDINGS AND ORDER
)	REVERSING THE DECISION OF THE
CASS COUNTY BOARD OF)	CASS COUNTY BOARD OF
EQUALIZATION,)	EQUALIZATION
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Three Parks LLC, to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on February 23, 2006, pursuant to a Notice and Order for Hearing issued December 12, 2005. Commissioners Lore, Hans and Warnes were present. Commissioner Warnes presided at the hearing.

Duane Menke, Managing Member of Three Parks LLC, appeared at the hearing on behalf of Three Parks LLC ("the Taxpayer") without counsel.

The Cass County Board of Equalization ("the County Board") appeared through counsel, Nathan Cox, Esq., Cass County Attorney for Cass County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case are as follows.

I. STANDARD OF REVIEW

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(8)(Supp. 2005). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

II. FINDINGS

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in the appeals filed as: Richey Place N 15' of Lots 17 -23 & W25' Lot 24 & S1/2 ADJ Alley N 10' Lot 25 & 26 & S1/2 ADJ Alley & E19' Lot 24(.22 acres) and Outlots PT Lot 75 D B 96 P 367 EXC PT D B105 P402 NW 1/4 NW 1/4 Section 13 - 12 - 13 (5.00 acres), Cass County,

Nebraska (“the subject property”). This property is commonly referred to as the Hill City Mobile Home Park and is located in Plattsmouth, Cass County, Nebraska.

2. The actual or fair market value of each parcel of the subject property described in the appeals, placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Cass County Assessor was:

	Case No. 05C - 102	Case No. 05C - 105
Land value	\$9,919	\$206,474
Improvements	00	\$78,867
Total value	<u>\$9,919</u>	<u>\$285,341</u>

3. The Taxpayer timely protested those values to the County Board. The Taxpayer proposed the following values for each parcel of the subject property which were described in the appeals:

	Case No. 05C - 102	Case No. 05C - 105
Land value	\$3,740	\$85,012
Improvements	00	\$78,867
Total value	<u>\$3,740</u>	<u>\$163,879</u>

4. The County Board determined that the actual or fair market value of each parcel of the subject property described in the appeals as of the assessment date was:

	Case No. 05C - 102	Case No. 05C - 105
Land value	\$9,919	\$206,474
Improvement value_	00	\$78,867
Total value	<u>\$9,919</u>	<u>\$285,341</u>

4. The Taxpayer timely filed appeals of those decisions to the Commission.
5. The County Board was served with Notices in Lieu of Summons, and duly answered those Notices.
6. The Taxpayer's appeals were consolidated for hearing by order of the Commission, said order dated December 12, 2005.
7. An Order for Hearing and Notice of Hearing issued on December 12, 2005, set a hearing of the Taxpayer's appeals for February 23, 2006, at 11:00 AM CST.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
9. The Taxpayer has adduced sufficient, clear and convincing evidence to show that the County Board is incorrect and has overcome the statutory presumption in favor of the County Board.
10. Based on the entire record before it, the Commission finds and determines that the actual or fair market value of each parcel of the subject property which were described in the case files for the tax year 2005 is:

	Case No. 05C - 102	Case No. 05C - 105
Land value	\$5,894	\$200,920
Improvement value_ 00		\$78,867
Total value	<u>\$5,894</u>	<u>\$279,787</u>

11. The values of the subject property as of the assessment date determined by the County Board are not supported by the evidence.
12. The decisions of the County Board were incorrect, arbitrary and unreasonable.

13. The decisions of the County Board should be reversed.

III. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission's rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016 (3) (Supp 2005).
4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
5. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).

6. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).
7. “Actual value, market value, and fair market value mean exactly the same thing.”
Omaha Country Club v. Douglas County Board of Equalization, et al., 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
8. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).
9. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005). The Nebraska Supreme Court, in considering similar language, has held that “There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.” *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).

10. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
11. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
12. The Court has also held that "In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment." *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
13. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
14. "It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of

- equalization.” *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58, (1991).
15. “It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based.” *Bottorf v. Clay County Bd. Of Equalization*, 7 Neb. App. 162, 167, 580 N.W.2d 561, 565, (1998).
16. “An owner who is familiar with his property and knows its worth is permitted to testify as to its value.” *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).
17. The appraisal of real estate is not an exact science. *Matter of Bock’s Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874, (1977).

IV. DISCUSSION

The subject property is known as Hill City Mobile Home Park located in Plattsmouth, Cass County, Nebraska. It consists of two tracts of ground. One tract is .22 acres in size and is contiguous to the second tract of 5.00 acres.

The property was purchased by Taxpayer in 1999 (County’s Property Card, E 4:3), and in 2000 by Taxpayer’s testimony, as a Mobile Home Park and has been used for this purpose since that time. There are no divisions between the two parcels such as fences and no sales have occurred since purchase by Taxpayer reducing the size of the subject property.

The Taxpayer testified that he did not object to the value placed on the entire trailer park, but he did not understand how the valuations were calculated for each parcel of land. In other

words, the Taxpayer objected to the apportionment of the valuation to each parcel rather than concern regarding the total valuation.

The Taxpayer did not object to the valuation placed by the county on the improvements. The county's position is that the property must be valued as a whole. Valuation of the property as a whole is appropriate and use of the sales comparison method of valuation is a proper method to do so; however, the Commission noticed the following mathematical error in calculation.

Exhibit 4:5 is the property record card for the 5.00 acre tract. The valuation for the smaller tract, .22 acres, is found on E 4:11. The land values calculated using these exhibits verifies that the county made an error as shown below.

	Parcel 1, 5 acres	Parcel 2, .22 acres	
Value Method	SF	SF	
# of units (square feet.)	217,800	9,583.2	
Unit Value/square feet	\$.95	\$1.04	
Multiplication by County	\$206,474	\$9,919	Total \$216,393
Multiplication by Commission	\$213,444	\$9,919	Total \$223,363
Difference in Totals			\$6,979

This difference in calculations causes the Commission to look more carefully at how the County calculated land valuations and the results show inconsistencies between the testimony given and the exhibits which were provided.

The County's appraiser testified that a Neighborhood Land Table was used to calculate the land value for each tract, E 5:1. This table gave values for the land using break points. The County's appraiser also testified that both parcels were included as one unit for valuation

purposes. This method of calculating the land value would give an advantage to the Taxpayer. While testimony revealed this was how the land valuation was supposed to be done, the Commission can see that each tract was separately valued using the Table in E 5:1. The table below shows how the 5.0 acre tract was valued as shown on E 4:4 using the Table, E 5:1.

Total Number of Units - 217,800 square feet

$$\$2.07/\text{square foot} \times 43,560 \text{ square feet} = \$ 90,169.20$$

$$\$2.0/\text{square foot} \times 65,340 \text{ square feet} = \$130,680$$

$$$.50/\text{square foot} \times 108,900 \text{ square feet} = \$54,450$$

$$\text{Total Gross Value} = \$ 275,299.20$$

Applying the Factor 5, from the table for Area 131, we multiply the Total Gross Value by 75% to get \$206,474.

The same application of the table to the second parcel, E 4:10 results in the figures shown. In other words, the higher per unit valuation was reapplied to the second property, *ie.* the land valuation process started over.

The total number of square feet for the smaller tract is 9583.2 and when the table is applied at the base value of \$2.07 square feet, the total Gross valuation is \$19,837.22. When the factor of 4 is used for the market area (50%) the net valuation as shown on E 4:10 of \$9,919 is as shown.

The Commission determines that the County's valuation is incorrect in accordance with their own testimony. This determination removes the presumption in favor of the County that their valuation was correct.

In order to calculate the land valuations, the Commission performed the following analysis. First, the total amount of land was valued using exhibit 5:1. The total amount of land for each parcel is 217,800 square feet for the 5.0 acre tract and 9,583.2 square feet for the smaller tract of .22 acres. The table below shows the Commission's analysis.

Parcel 1 (5) acres	Parcel 2 (.22) acres	
217,800 square feet	9,583.2 square feet	Total area = 227,383.20 square feet

Using the total area the following calculation was made using the Neighborhood Table, E 5:1.

$$\$2.07/\text{square foot} \times 43,560 \text{ square feet} = \$ 90,169.20$$

$$\$2.0/\text{square foot} \times 65,340 \text{ square feet} = \$130,680.00$$

$$\$0.50/\text{square foot} \times 118,483 \text{ square feet} = \$59,241.50$$

$$\text{Total Valuation} = \$280,090.70$$

The average value per unit is $280,090.70/227,383.20 = \$1.23/\text{square foot}$. This average per square foot can now be used to value each tract and then apply the Size and Topo factor as shown below.

Tract One (5.0 acres)

$$217,800 \text{ square feet} \times \$1.23 \text{ square feet} = \$267,894 \times .75 = \$200,920.$$

Tract Two (.22 acres)

$$9583 \text{ square feet} \times \$1.23 = \$11,797 \times .50 = \$5,894.$$

Total Valuation Calculated by the Commission = \$206,814.

The total value of land as determined by the Commission is \$206,814. This is in comparison to the County's valuation of \$216,393.

**V.
ORDER**

IT IS THEREFORE ORDERED:

1. That the decisions of the County Board determining the actual or fair market value of each parcel of the subject property which were described in the appeals as of the assessment date, January 1, 2005 are reversed and the following valuations are ordered for the year 2005.

	Case No. 05C - 102	Case No. 05C - 105
Land value	\$5,894	\$200,920
Improvement value_ 00		\$78,867
Total value	<u>\$5,894</u>	<u>\$279,787</u>

2. That this decision, if no appeal is timely filed, shall be certified to the Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2005.

6. This order is effective for purposes of appeal March 22, 2006.

Signed and Sealed. March 22, 2006.

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

William C. Warnes, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.